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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 28 August 1997, at 10 a.m.

Chairman: Mr. BENGOA

CONTENTS

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

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GE.97-13987 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

The administration of justice and human rights:

(a) Question of human rights and states of emergency;

(b) Application of international standards concerning the human rights of detained juveniles and the judicial protection of children;

(c) Gross and massive violations of human rights as an international crime;

(d) Juvenile justice

(agenda item 9) (continued)

Draft resolution E/CN.4/Sub.2/1997/L.49 (continued)

1. Mrs. PALLEY proposed amending paragraphs 1 and 2 of the draft resolution, by substituting the words "Mr. M.S. Ali Khan" for the words "one of its titular experts". Mr. Ali Khan was well qualified to undertake the study on issues relating to the privatization of prisons, having for many years been Chief Justice of the Indian state of Andra Pradesh. As Chief Justice, responsible for habeas corpus supervision, and later as a member of India's National Commission on Human Rights, he had regularly visited prisons.

2. In her 1993 outline paper on privatization of prisons (E/CN.4/Sub.2/1993/21), she had suggested that the two qualities a special rapporteur on the subject would require were legal expertise on the interaction of human rights and State responsibility and expertise in penology. At that time, no Sub-Commission expert combined those two qualifications, and she had suggested that the Sub-Commission, instead of doing a study, should use the International Law Commission and the Centre for Social Development and Humanitarian Affairs. Others had wished to pursue a Sub-Commission study, so a proposal had been put forward, referring to the appointment of a "titular expert".

3. In 1994 the Commission had rejected the proposal for two reasons. First, the United States of America and the then United Kingdom Government, which had favoured private prisons, had not wanted such a study, because her arguments suggested that privatization, where it involved private persons controlling the persons of prisoners, was unlawful. Secondly, there was concern that she herself - a person who had expressed opinions about the possible unlawfulness of prison privatization, and whose attempt to do a study on the implications for human rights of humanitarian activities, including intervention, had just been thwarted by the United States - might wish to do the study, and be appointed.

4. She had always believed that it was not only tactically unwise but also wrong to try to make points of principle against the Commission. If the Sub-Commission tried to do that, by using the words inserted by

Mr. Alfonso Martínez in his draft resolution, the only result would be that the study would not be approved by the Commission. If a study with a potential for embarrassing several Governments was to be undertaken, the Commission must trust the member charged with undertaking it. The appointment of Mr. Ali Khan, who was known to be a distinguished and fair jurist who would also bring geographical balance to the studies, would give the Commission confidence.

5. In the sessional working group on the administration of justice she had let Mr. Alfonso Martínez, the progenitor of the idea of a prisons privatization study, speak before herself proposing the study. Mr. Alfonso Martínez and she had agreed from the outset that they should approach Mr. Ali Khan, who had then kindly agreed to do the study. At the drafting stage, however, Mr. Alfonso Martínez had been reluctant to insert a name in the Working Group's draft decision, ostensibly because one member was known to disapprove of alternates doing studies. Had she then been aware of the reasons given at the 35th meeting, she would certainly have objected to them. Nevertheless, though sceptical with regard to the reason given by Mr. Alfonso Martínez, she had left him to do the drafting, having secured his personal promise to nominate Mr. Ali Khan if the Commission approved the study. It had then transpired that Mr. Ali Khan might not be re-elected to the Sub-Commission in April 1998. That consideration must, however, be seen in context; for, with the hazards of renomination, electoral defeat and the hand of fate, no member's future was certain.

6. The second question of principle raised by Mr. Alfonso Martínez at the 35th meeting was that members who might not be returned could not embark on a study. If that was so, the Sub-Commission must be consistent: consequently, no study could be commenced by an outgoing member and his or her alternate. But practice was against such a principle; indeed, some outgoing members were proposed for studies in the current session's resolutions. In 1993, she herself had been nominated - by Mr. Alfonso Martínez - to do the study on the implications of humanitarian activities for human rights, at a time when it had seemed that the United Kingdom Government would not renominate her because she had been critical of the conduct of the police in Northern Ireland. There was clearly no principle that a member whose term was coming to an end should not be nominated for a study for which he or she was by far the most appropriate available person. It had long been the practice to invite former members to present long-continued studies; and if, by some misfortune, Mr. Ali Khan were to become a former member, the Sub-Commission would greatly value his work.

7. She appealed to Mr. Alfonso Martínez not to elevate the non-naming of an expert into a point of principle: getting the study done was more important; and he had indicated that he himself could not and would not do the study. Nor could the Sub-Commission afford to risk losing Mr. Ali Khan's services because of Commission concerns. If Mr. Alfonso Martínez insisted on getting the Commission's approval when, having heard the debate, it might well see that the resolution, as adopted, was bravado, she would ask for it to be put to a vote.

8. Mr. ALFONSO MARTÍNEZ said that the current discussion was most unfortunate, especially as there seemed to be agreement on the two most important issues. First, the idea seemed to be gaining ground that the phenomenon of privatization of prisons merited an in-depth study by the Sub-Commission. Secondly, there was agreement as to Mr. Ali Khan's outstanding personal qualities. His objection concerned the manner in which the business was conducted. When in 1993 the Sub-Commission had first decided to draw the Commission's attention to the need for a study, it had used exactly the formulation used in the draft resolution now under consideration, in order to avoid any risk that the naming of an expert might influence the Commission's decision; and also to defend the Sub-Commission's right to decide on the expert to be appointed. He had made it clear from the outset that, for various reasons, he himself could not possibly undertake the study. Nonetheless, it had been intimated that the choice of the expert to conduct the study could influence the Commission's decision on whether the study was in fact desirable - particularly if he himself were to be nominated to conduct it.

9. Mrs. Palley's account of their negotiations was, to say the least, incomplete. When she had first suggested that Mr. Ali Khan should be nominated, he himself had been the first to endorse the suggestion. As soon as he had prepared a preliminary draft, he had sought Mrs. Palley's opinion, and she had immediately signed it as a sponsor. He could not support the amendment that, having withdrawn as a sponsor, she now proposed, because if it transpired that for any reason Mr. Ali Khan was unable to undertake the study, its commencement would be delayed by a whole year.

10. He therefore wished formally to move a sub-amendment to her amendment. After the words "Mr. M.S. Ali Khan", the words "in the event that he continues to be a member of the Sub-Commission" should be added. That sub-amendment reaffirmed Guideline No. 4 contained in the annex to Sub-Commission resolution 1992/8. The need to bring in special rapporteurs from outside the Sub-Commission to replace members who had not been re-elected raised a host of financial and practical difficulties. If it transpired that Mr. Ali Khan continued to be a member of the Sub-Commission, he would be the first to request the Sub-Commission to appoint him to undertake the study.

11. The CHAIRMAN said that there was a long list of speakers on draft resolution E/CN.4/Sub.2/1997/L.49.

12. Mr. YIMER, speaking on a point of order, moved that under rule 50 of the rules of procedure the debate should be closed and a vote taken on the sub-amendment and the amendment.

13. Mr. JOINET and Mr. ALFONSO MARTÍNEZ opposed the motion by Mr. Yimer.

14. Mr. Yimer's motion was adopted by 13 votes to 7 with no abstentions.

15. After a discussion in which Mr. ALFONSO MARTÍNEZ, Mr. YIMER, Mrs. DAES, Mr. CHERNICHENKO and Mr. LINDGREN ALVES took part, the CHAIRMAN invited members to vote on the sub-amendment moved by Mr. Alfonso Martínez.

16. The sub-amendment was rejected by 13 votes to 2, with 7 abstentions.

17. The CHAIRMAN invited members to vote on the amendment proposed by Mrs. Palley.

18. The amendment was adopted by 16 votes to 3, with 3 abstentions.

19. The CHAIRMAN asked whether the Sub-Commission wished to adopt the draft resolution, as amended, without a vote.

20. Mr. WEISSBRODT expressed serious doubts about the draft resolution as it stood. The privatization of prisons was only one narrow aspect of the more important issue of prison conditions. He was reminded of criticisms that the Sub-Commission was overly concerned with "hobbies and lobbies". An earlier proposal for a study on the privatization of prisons had been rejected by the Commission on Human Rights, and experience suggested that the Commission was unlikely to approve the present proposal. Moreover, unless the draft resolution was amended to broaden its scope, three years was an inappropriately long period of time to complete a study which had largely been carried out already, and could be quite easily completed by the fifty-first session of the Sub-Commission.

21. Mr. GUISSÉ said it was almost certain that the Commission would reject the recommendations in the draft resolution, as they were practically the same as those it had already rejected. After all, the privatization of prisons was a sensitive issue that touched on State sovereignty, and the Commission consisted of Government representatives.

22. Mr. FAN Guoxiang said he would not participate in any vote on the draft resolution as the privatization of prisons was a non-issue as far as he was concerned. Prisons were an integral part of the law enforcement bodies of Governments, and could not be privatized.

23. Mr. ALFONSO MARTÍNEZ said he could not support the resolution as amended because of the practical consequences of submitting that type of resolution to the Commission. Such resolutions left the Commission free to decide on the relative merits of experts capable of carrying out a study.

24. Mrs. DAES said that, in the past, members of the Sub-Commission who had been nominated as special rapporteurs had continued to write their reports even if they were not re-elected to the Sub-Commission.

25. Mr. EIDE agreed with Mrs. Daes on the past practice of the Sub-Commission; he had found himself in the very situation she described in 1983. If the principle enunciated by Mr. Alfonso Martínez was applied, 13 members would not be eligible for nomination in draft resolutions. The naming of the special rapporteur was immaterial to the decision on whether to carry out a study. Moreover, while prison conditions had been comprehensively studied, the privatization of prisons was a new and worrying trend, and thus merited a study by the Sub-Commission.

26. Mr. ALFONSO MARTÍNEZ disagreed with that interpretation of the Sub-Commission's past practice; the case of Mr. Eide and the examples mentioned by Mrs. Daes were fundamentally different from the case of Mr. Ali Khan, whose name had not yet been put forward to the Economic and Social Council.

27. Mrs. PALLEY said that the amended draft resolution in no way went against the expressed wishes of the Commission, nor did it repeat the wording used in Sub-Commission decision 1993/109, in which the Commission had been requested to "authorize the Sub-Commission ... to appoint one of its members to undertake a special study". In its decision 1994/103, the Commission had requested the Sub-Commission to reconsider its decisions to recommend a number of new studies, including the one on the privatization of prisons. She believed that the current draft resolution was in line with that request.

28. Mr. JOINET said he did not agree that a colleague, however eminent, must be nominated because he would most probably not be put forward by his Government for re-election. Guideline No. 4 specified that a special rapporteur who was no longer a member of the Sub-Commission should only carry on his duties for one year after the expiry of his term unless the Sub-Commission decided otherwise. In other words, if a colleague was nominated who was not re-elected, a debate would have to be held at the following session specifically to decide on whether his mandate should be extended or not. For that reason, after long deliberation at the meeting of the sessional working group on the administration of justice, it had seemed sensible to postpone the nomination of the special rapporteur for a year.

29. Draft resolution E/CN.4/Sub.2/1997/L.49, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.56

30. Mr. WEISSBRODT said that updating the list of States which had proclaimed, extended or terminated a state of emergency was a unique and useful service provided by the Sub-Commission to the world community and the Commission on Human Rights in particular. However, there was no real need to list every year those States that had terminated a state of emergency; to do so every five years would suffice. Also, Mr. Despouy had indicated his readiness to "pass the torch" and Mr. Maxim had agreed to serve as the new Special Rapporteur. He therefore proposed that paragraph 2 should be replaced with:

> 2. Recommends the following draft resolution to the Commission on Human Rights for adoption:
>
> > The Commission on Human Rights, taking note of resolution 1997/... of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, requests Mr. Ioan Maxim to serve as the new Special Rapporteur on the question of human rights and states of emergency so that he can submit in the eleventh annual report an updated list of States which have proclaimed or extended a state of emergency, and a

list - to be submitted once every five years - of those States which have terminated a state of emergency in the past, together with further recommendations on the protection of human rights during states of emergency.

31. Mr. ALFONSO MARTÍNEZ agreed that the anomaly of an ex-member of the Sub-Commission continuing to carry out studies years after the end of his mandate should be corrected.

32. Draft resolution E/CN.4/Sub.2/1997/L.56, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.60

33. Mr. ALFONSO MARTÍNEZ, supported by Mr. YIMER, said that paragraph 4 had been included by mistake. The draft resolution should end with paragraph 3.

34. Mr. JOINET said he believed the mistake was not the inclusion of paragraph 4, but the erroneous inclusion in that paragraph of "High Commissioner/Centre for Human Rights" instead of "Commission on Human Rights". It was quite normal for a set of principles to be transmitted to the General Assembly, as had been the case with the Sub-Commission's guidelines on electronic data protection.

35. Mrs. WARZAZI suggested, by way of compromise, that paragraph 4 could be deleted, and the following phrase added to the end of paragraph 3: "with a view to its possible transmission to the General Assembly through the Economic and Social Council".

36. Draft resolution E/CN.4/Sub.2/1997/L.60, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.46

37. The CHAIRMAN announced that Mrs. Attah, Mr. El-Hajjé, Mr. Guissé, Mr. Joinet, Mr. Khalil, Mr. Maxim and Mr. Mehedi had become sponsors of the draft resolution.

38. Mrs. DAES said that the name of the Special Rapporteur had been inadvertently omitted from paragraph 11. The last part of the sentence should read: "... recommends ... that the final report of the Special Rapporteur, Mr. Awn Al-Khasawneh, on human rights and population transfer be published and widely disseminated".

39. Mr. ALFONSO MARTÍNEZ proposed to add "the right to freedom of travel" to the list of activities included under the "right to freedom of movement" in paragraph 8.

40. Mr. BOSSUYT did not agree with that proposal, since the right to freedom of travel, unlike the other rights listed, was not recognized in the Universal Declaration of Human Rights or other international instruments.

41. Mrs. WARZAZI said that freedom of travel was an important issue and could be mentioned without referring to it as a "right". There were indeed many restrictions on travel, even for tourist purposes, in places like Europe.

42. Mr. ALFONSO MARTÍNEZ said that Mr. Bossuyt's point was technically correct, and rephrased his proposal to read, "the question of the freedom of travel".

43. Mr. BOSSUYT said that last-minute additions to a draft resolution were not the way to address complex fundamental issues. It would suffice to draw the attention of Mr. Boutkevitch, the Special Rapporteur on freedom of movement, to the question.

44. Mr. ALFONSO MARTÍNEZ agreed to withdraw his amendment, pending the appointment of Mr. Boutkevitch.

45. Draft resolution E/CN.4/Sub.2/1997/L.46, as orally revised, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.47

46. Mr. ALFONSO MARTÍNEZ suggested that, following Mr. Bossuyt's remark that the question of freedom of travel should be brought to the attention of Mr. Boutkevitch, the "possibility to enter other countries" (para. 4, line 10) might be amended to read the "possibility to travel and to enter other countries".

47. Draft resolution E/CN.4/Sub.2/1997/L.47 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.53

48. The CHAIRMAN announced that Mr. Eide, Mr. Guissé, Mrs. Gwanmesia, Mr. Khalil and Mrs. Warzazi had become sponsors of the draft resolution.

49. Mrs. WARZAZI said she found the wording of paragraph 6 somewhat strong. She proposed that the words "have fled or been driven out" should be replaced by "originated", that the words "resolve such long-standing questions", should be replaced by "achieve" and that the words "to enable" should be deleted.

50. Mr. JOINET said that there had originally been several draft resolutions on the situations of specific countries, but it had been decided to submit a more general, non-politicized resolution. Since the proposed amendment did not affect the form or substance of the draft resolution, he wished to become a sponsor.

51. Mr. FAN Guoxiang said he saw some problems with the draft resolution. First, the right to leave or return to a country had serious implications with regard to personal freedom and respect for domestic law. Second, there was an imbalance between the powers of the United Nations and that of member States. The draft appeared to criticize any Government whose legislation or legitimate regulations placed limitations on freedom of departure and return, and paragraph 8 even called upon Governments to revise their citizenship laws.

In his opinion, the draft resolution went too far in that respect. Third, there seemed to be a confusion between the mandates of the High Commissioner for Human Rights (HCRC) and the High Commissioner for Refugees (HCR) and between internal displacement and international travel. However, he would not stand in the way of consensus on the draft resolution.

52. Mr. MEHEDI, supported by Mrs. ATTAH, said he objected to deletion of the words "have fled or be driven out" from paragraph 6. Flight was the result of a personal decision, whereas "driven out" implied action outside the refugee's control, for example, on the part of a Government.

53. Mr. GUISSÉ said he agreed with Mrs. Warzazi's proposed amendments to paragraph 6. It was the restraint demonstrated by the draft resolution which had allowed many members of the Sub-Commission to sponsor it, and the same would be true of the international community. The reason for refugees' departure from a country was less important than their right to voluntary return.

54. Mr. MEHEDI requested a vote on the amendments proposed by Mrs. Warzazi.

55. Mrs. WARZAZI, speaking on a point of order, said that if the draft resolution was put to a vote, she would withdraw from the sponsors.

56. The amendments proposed by Mrs. Warzazi were adopted by 14 votes to 1, with 8 abstentions.

57. Draft resolution E/CN.4/Sub.2/1997/L.53, as amended, was adopted without a vote.

Promotion and protection of human rights of children and youth (agenda item 10 bis) (continued)

Draft resolution E/CN.4/Sub.2/1997/L.54

58. Draft resolution E/CN.4/Sub.2/1997/L.54 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.59

59. Mr. ALFONSO MARTÍNEZ, introducing the draft resolution, said he had worked closely with the United Nations Children's Fund (UNICEF) and various non-governmental organizations (NGOs) in preparing the draft resolution but that, unfortunately, he had not had time to discuss it with any members of the Sub-Commission except Mr. Weissbrodt, who had proposed replacing the word "annually" in paragraph 3 by "at its fiftieth session".

60. Mrs. ATTAH said that a representative of an NGO had suggested at a recent meeting that the Sub-Commission should combine all issues within its mandate which related to children and youth under a single agenda item. Perhaps the Sub-Commission should consider that suggestion at its next session.

61. Mr. GUISSÉ said he disagreed with that suggestion since some matters, such as juvenile justice, concerned not all children but only those in a particular situation, whereas the purpose of agenda item 10 bis, as of the Convention on the Rights of the Child, was to promote the human rights of all children.

62. With regard to Mr. Weissbrodt's proposed amendment to paragraph 3, he thought that the question of the human rights of children and youth was an important one which should be reviewed on an annual basis. He therefore preferred the original text.

63. Mr. YIMER asked Mr. Alfonso Martínez to explain what was meant by the tenth preambular paragraph.

64. Mr. ALFONSO MARTÍNEZ said that since a number of United Nations treaty bodies were already drafting new standards on the rights of the child, he had wished to suggest that it would be unwise for the Sub-Commission to do the same.

65. Mr. EIDE said that while he agreed that the question of children was very important, he was not very much in favour of the draft resolution. Indeed, the tenth preambular paragraph of which stated that a large number of United Nations treaty and non-treaty bodies were already concerned with the promotion and protection of those rights showed that the draft resolution was not necessary. The Convention on the Rights of the Child had been ratified by 191 countries and he hoped that the United States would soon join that number, making accession nearly universal. He did not think that the Sub-Commission could meaningfully implement paragraph 2, namely, improve coordination and cooperation among the entities involved in that sphere, without expending a considerable amount of time and expertise which it could ill afford. He would therefore suggest that the Sub-Committee should not adopt the draft resolution.

66. Mr. YOKOTA said that Mr. Alfonso Martínez had performed a valuable service by providing the Sub-Commission with an opportunity to consider its proper role in an important area. However, he agreed with Mrs. Attah and Mr. Eide; there was already a treaty body established under the Convention on the Rights of the Child, and the Sub-Commission was free to make recommendations to such bodies as it had done in draft resolution L.54. Adoption of draft resolution L.59 might lead to confusion with existing agenda items at a time when the Sub-Commission was seeking to achieve greater focus in its work. He proposed that the Sub-Commission should postpone consideration of draft resolution L.59 until its next session.

67. Mrs. GWANMESIA said the discussion seemed to be centring on an issue which she thought to have been resolved. The problem with the draft resolution was that the tenth preambular paragraph appeared to contradict the purpose of the draft resolution as expressed in paragraph 2, which stated that the Sub-Commission should contribute to improving coordination and cooperation among other entities so as to facilitate concrete action aimed at the realization of all rights of all children and youth. That was an issue which the Sub-Commission had often discussed under various agenda items. If the

draft resolution was not to be adopted, why had the Sub-Commission added item 10 bis to its agenda? She proposed that the ambiguous elements of the tenth preambular paragraph should be deleted.

68. Mrs. ATTAH said she had not meant to suggest that she did not support the draft resolution. She had simply concurred with the suggestion by a representative of an NGO that the Sub-Commission should combine all issues related to children and youth under a single agenda item.

69. Mrs. PALLEY, speaking on a point of order, said it was her understanding that Mr. Yokota had proposed that the Sub-Commission should postpone consideration of the draft resolution until its next session. She supported that proposal and was concerned that adoption of the draft resolution without fuller discussion might have a negative impact on the work of the Working Group on Contemporary Forms of Slavery.

70. The CHAIRMAN said that the Sub-Commission would begin by voting on Mr. Eide's proposal that the Sub-Commission should not adopt the draft resolution.

71. Mr. EIDE said he was prepared to withdraw his proposal.

72. Mr. ALFONSO MARTINEZ, speaking on a point of order, said he wished to point out the practical consequences of Mr. Yokota's proposal. It was not certain whether item 10 bis would be included in the agenda of the Sub-Commission at its next session and, in any case, adoption of the proposal would mean that the entire discussion would have to be repeated when the Sub-Commission established the programme of work for that session. He intended to vote against the proposal.

73. At the request of Mr. Alfonso Martínez, a vote was taken by roll-call on Mr. Yokota's proposal.

In favour: Mr. Bossuyt, Mrs. Daes, Mr. Eide, Mr. Yokota, Mr. Joinet, Mr. Maxim, Mrs. Palley.

Against: Mr. Alfonso Martínez, Mr. Ali Khan, Mr. Boutkevitch, Mr. Chernichenko, Mr. El-Hajjé, Mr. Diaz Uribe, Mr. Guissé, Mrs. Gwanmesia, Mr. Fix Zamudio, Mr. Mehedi, Mrs. Warzazi, Mr. Yimer.

Abstaining: Mrs. Attah, Mr. Fan, Mr. Khalil, Mr. Park, Mr. Weissbrodt.

74. Mr. Yokota's proposal was rejected by 12 votes to 7, with 5 abstentions.

75. Mrs. DAES, speaking in explanation of vote, said that her vote in favour of postponement of consideration of the draft resolution should on no account be viewed as a lack of concern for the rights of children and youth. She merely felt that the Sub-Commission could afford to take more time to reflect on its implications because so much valuable work on behalf of children's rights was already being done by the Committee on the Rights of the Child and other competent bodies in the United Nations system, including the Sub-Commission's Working Group on Contemporary Forms of Slavery.

76. Mr. KHALIL, speaking in explanation of vote, said that his abstention had nothing to do with the content of the draft resolution but with the organization of the Sub-Commission's work.

77. Mr. EL-HAJJÉ, speaking in explanation of vote, said that he had voted against Mr. Yokota's proposal because he strongly supported the reference in the draft resolution to the Sub-Commission's role in promoting the rights of children and youth.

78. The CHAIRMAN announced that Mrs. Attah and Mr. Guissé had joined the sponsors of the draft resolution.

79. Draft resolution E/CN.4/Sub.2/1997/L.59 was adopted without a vote.

Review of further developments in fields with which the Sub-Commission has been or may be concerned:

(a) The fiftieth anniversary of the adoption of the Universal Declaration of Human Rights;

(b) Review of developments concerning recommendations and decisions relating, inter alia, to:

(i) Promotion, protection and restoration of human rights at national, regional and international levels;

(ii) Elimination of all forms of intolerance and of discrimination based on religion and belief;

(iii) Encouragement of universal acceptance of human rights instruments;

(c) Review of issues not previously the subject of studies but which the Sub-Commission had decided to examine:

(i) Implications of humanitarian activities for the enjoyment of human rights;

(ii) Terrorism and human rights;

(iii) International peace and security as an essential condition for the enjoyment of human rights, above all the right to life;

(d) Other new developments:

(i) Adverse consequences of the transfer of arms and illicit trafficking in arms on the enjoyment of human rights;

(ii) Arbitrary deprivation of nationality

(agenda item 11) (continued)

Draft resolution E/CN.4/Sub.2/1997/L.4

80. Mr. JOINET proposed the following amended versions of the ninth and tenth preambular paragraphs:

> "Welcoming further the future international conferences to be held in Oslo from 1 to 19 September 1997 (to finalize negotiations) and in Ottawa from 2 to 4 December 1997, at which future parties to the treaty will sign,
>
> Regretting the inadequate result of the Review Conference of States parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects held in Geneva in May 1996 as regards the distinction made between 'intelligent' and 'dumb' mines and the nine-year period given to States to cease the use of undetectable anti-personnel mines."

The amendment to the ninth preambular paragraph corrected the dates of the Oslo conference and the amendment to the tenth preambular paragraph aligned the wording of the last line with the text of the Convention in question.

81. He further proposed to insert the following two new operative paragraphs after paragraph 4, renumbering the subsequent paragraphs accordingly:

> "5. Strongly invites Governments to participate actively in the Oslo Diplomatic Conference to Negotiate a Total Prohibition of Anti-Personnel Mines (Oslo, Norway, 1-19 September 1997) and to commit themselves to signing an international treaty banning anti-personnel mines at the Ottawa Conference (Ottawa, Canada, 2-4 December 1997);
>
> 6. Urges Member States to promote the establishment of regional and subregional zones free of anti-personnel mines."

82. Lastly, he proposed jointly with Mr. Khalil the following amendment to the first part of operative paragraph 7:

> "7. Requests the Secretary-General to transmit to all Governments, particularly in countries which have in the past laid anti-personnel landmines in the territory of third countries, the Sub-Commission's appeal ...".

83. Mr. CHERNICHENKO said that while he appreciated the good intentions of the sponsors of the draft resolution, he did not wish to participate in its adoption, whether with or without a vote, because, in his view, it fell outside the terms of reference of the Sub-Commission and should be left to the bodies responsible for disarmament matters.

84. Mr. ALFONSO MARTÍNEZ said that he was unable to support the draft resolution because it dealt with a matter of great technical complexity and with direct and indirect military implications that he was not qualified to discuss. The Sub-Commission was not the proper forum for dealing with such issues which would in any case be addressed shortly at the Oslo conference.

85. Mr. FAN Guoxiang said that he shared the views of Mr. Chernichenko and Mr. Alfonso Martínez. While the international community must seek as a matter of urgency to prevent civilian casualties due to landmines, a distinction must be made between the indiscriminate use of anti-personnel landmines and the existence of such mines. He appreciated the humanitarian ideals of those who advocated a total ban but it must be understood that the elimination of an entire category of purely defensive conventional weapons was a major disarmament measure and that legitimate national security requirements must be taken into account. A practical and reasonable solution to the problem could only be negotiated by the Conference on Disarmament. Involvement by the Sub-Commission would only complicate its task. As he doubted whether the members of the Sub-Commission were in a position to understand all the implications of the draft resolution and of Mr. Joinet's proposed amendments, he felt that they should leave the matter to the competent bodies.

86. Mr. YIMER said that the Ottawa process had gathered such momentum that the argument that anti-personnel landmines were a disarmament issue had been discredited. The Conference on Disarmament operated at an extremely slow pace and was unlikely to produce a multilateral treaty in the near future. It had therefore been sidelined and over 100 countries had opted instead for the Ottawa process. The Sub-Commission was competent to deal with the question of landmines because it was a humanitarian and not a disarmament issue.

87. He suggested that "strongly invites" in the new paragraph 5 proposed by Mr. Joinet should be amended to read "strongly urges".

88. Mr. GUISSÉ said he would have no difficulty in adopting the draft resolution. As independent experts, the members of the Sub-Commission could make a useful contribution to the discussion of landmines. He was unhappy, however, with the distinction between "intelligent" and "dumb" mines. In his view, all anti-personnel mines should be prohibited.

89. Mr. JOINET said he fully agreed with Mr. Yimer. Progress in disarmament was frequently due to action by NGOs that had specialized in the fields concerned.

90. The distinction between "intelligent" and "dumb" mines was certainly regrettable but it had been made in the Convention itself. It would be inadvisable to give the impression that the Sub-Commission was calling for a renegotiation of its content.

91. Mr. WEISSBRODT said that he could sympathize with the speakers who had questioned the Sub-Commission's competence to deal with such a technical subject because he had made the same point himself at the previous session. He had been convinced in the meantime, however, that very serious human rights issues were involved.

92. As a sponsor of the draft resolution, he found Mr. Joinet's proposed amendments entirely acceptable.

93. He drew Mr. Guissé's attention to paragraph 1 which called for a total ban on anti-personnel mines.

94. The CHAIRMAN announced that Mr. Joinet had joined the sponsors of the draft resolution.

95. Draft resolution E/CN.4/Sub.2/1997/L.4, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.6

96. Mr. BOSSUYT proposed the following amended version of paragraph 1:

> "1. Emphasizes that the conduct of military contingents put at the disposal of the United Nations should always be in conformity with the norms of international humanitarian law and of international human rights law."

97. Mr. EL-HAJJÉ said that the media had recently reported human rights violations by United Nations personnel who did not form part of the military contingents.

98. Mr. ALFONSO MARTÍNEZ proposed that paragraph 1 should be amended to cover not only military contingents but all personnel participating in United Nations operations.

99. Mr. WARZAZI said that, according to the evidence available to date, troops from countries such as Belgium, Canada and Italy had been responsible for the horrors perpetrated in Somalia and elsewhere. As a sponsor, she found Mr. Bossuyt's proposed amendment acceptable but not that proposed by Mr. Alfonso Martínez.

100. Mr. GUISSÉ said that the draft resolution had been prepared in response to human rights violations by military contingents. No other categories of personnel should be included, at least not until evidence of their wrongdoing had come to light.

101. Mrs. ATTAH agreed that the Sub-Commission should refrain from targeting other categories of personnel unless it was sure of its facts.

102. Mr. ALI KAHN said that the term "peacekeeping operations" in paragraph 2 would in any case cover all such cases. He wished to join the sponsors of the draft resolution.

103. Mr. ALFONSO MARTÍNEZ said that he withdrew his amendment.

104 Draft resolution E/CN.4/Sub.2/1997/L.6, as amended, was adopted.

The meeting rose at 1 p.m.